

REMARKS

Claims 14-26 were pending in this application when last examined. Claims 22 and 24-26 have been canceled. Claim 23 is currently withdrawn, claims 14, 16-19 and 23 are currently amended and new claims 27-30 have been added.

Applicants gratefully acknowledge the time and consideration provided to Applicants' representative by Examiner Burkhardt during the February 25, 2010 and March 31, 2010 telephone conferences. During those conferences, the allowable subject matter and the possible rejoinder of the non-elected and withdrawn claims were discussed. In particular, the Examiner indicated that claims limited to SEQ ID NOs: 2, 12, 13 and 14 appear to be allowable and that claim 23 may be rejoined.

The Examiner's helpful comments and suggestions have been incorporated in the present amendments. Specifically, currently amended claim 14 is directed to a DNA transfer vector comprising at least one of the nucleotide sequences selected from the group consisting of SEQ ID NO: 2, 12, 13 and 14. Each of claims 15-21, 23 and 27-30 depends from claim 14. New claims 27-30 further limit the group of SEQ ID NOs in claim 14 to a specific sequence.

Applicants submit that this Amendment After Final Rejection places this application in condition for allowance by amending claims in manners that are believed to render all pending claims allowable over the cited art and/or at least place

this application in better form for appeal. This Amendment takes into consideration the discussions with the Examiner regarding the allowable subject matter. Accordingly, entry of the present Amendment, as an earnest attempt to advance prosecution and/or to reduce the number of issues, is requested under 37 C.F.R. §1.116.

#### **CLAIM OBJECTIONS**

At page 2, the Office Action objects to claims 14-22 for reciting non-elected subject matter. Although the Office Action states that any SEQ ID NO other than SEQ ID NO: 2 is "non-elected", the Examiner indicated during subsequent telephone conferences that claims featuring SEQ ID NO: 2, 12, 13 and 14 would be searched and examined on the merits.

Currently amended claims 14-21, as well as withdrawn claim 23 and new claims 27-30, are limited to featuring at least one of SEQ ID NO: 2, 12, 13 and 14. Claim 22 has been canceled. Accordingly, Applicants request reconsideration and withdrawal of the objection.

#### **CLAIM REJECTIONS - 35 USC § 102**

At page 2, the Office Action rejects claims 14-17 and 20-22 under 35 U.S.C. § 102(b) as being anticipated by CHEN et al. (Cancer Res. 1998). Applicants respectfully traverse the rejection.

The Office Action holds the position that claim 14 recites open language, i.e., the vectors comprise "a nucleotide sequence" of SEQ ID NO: 2. Currently amended claim 14, however, is directed to a DNA transfer vector comprising at least one of the nucleotide sequences selected from the group consisting of SEQ ID NO: 2, 12, 13 and 14. As detailed in the specification, these sequences encode a rat/human p185neu chimeric protein. CHEN fails to teach or suggest such nucleotide sequences. For at least this reason, CHEN fails to anticipate claim 14 and claims 15-17 and 20-21, as well as claim 23 and claims 27-30 dependent thereon. Claim 22 has been canceled.

Accordingly, Applicants request reconsideration and withdrawal of the rejection.

#### **CLAIM REJECTIONS - 35 USC § 103**

At page 4, the Office Action rejects claims 18-19 under 35 U.S.C. § 102(b) as being unpatentable over CHEN in view of KRIEG et al. (US 6,653,292). Applicants respectfully traverse the rejection.

Claims 18 and 19 depend from claim 14 and further include CpG motifs. As detailed in the above remarks, however, CHEN fails to teach or suggest a DNA transfer vector according to claim 14. KRIEG fails to remedy the deficiencies of CHEN and the Office Action only relies on KRIEG for teaching the CpG motif feature. Thus, the combination of CHEN and KRIEG fails to teach

or suggest and fails to render obvious claims 18 and 19. Accordingly, Applicants request reconsideration and withdrawal of the rejection.

#### **DOUBLE PATENTING**

At page 4, the Office Action notes the possible double patenting issue regarding claims 21 and 22. Claim 22 is canceled thus rendering the double patenting issue moot.

#### **CLAIM REJOINDER**

Withdrawn and currently amended claim 23 is directed to a combined pharmaceutical preparation comprising at least two different DNA transfer vectors according to claim 14. As discussed during the March 31, 2010 telephone conference, Applicants respectfully request the rejoinder of claim 23.

#### **CONCLUSION**

Entry of the above amendments is earnestly solicited. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or

credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/H. James Voeller/  
H. James Voeller, Reg. No. 48,015  
Customer No. 00466  
209 Madison Street, Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

HJV/jaa